

**OPINION
73-113**

March 23, 1973 (OPINION)

Mr. John O. Garaas
State's Attorney
10 1/2 Broadway
Fargo, ND 58102

Dear Mr. Garaas:

This is in response to your letter in which you ask for an opinion on the following questions:

- . Would the township supervisors have authority to license and charge a fee for the sale of fireworks within the township in addition to the permit provided for in section 23-15-04 of the North Dakota Century Code? (See Powers of Townships in section 58-03-01, 58-03-07, 58-06-01, N.D.C.C.)
- . Would the Board of County Commissioners have authority to license and charge an additional fee for the sale of fireworks, such fee being in addition to that provided for in section 23-15-04 of the North Dakota Century Code? (See sections 11-11-11 and 11-11-14, N.D.C.C.)
3. In event the Sheriff of Cass County decides to do so, would it be possible for the Sheriff to refuse to issue any license for the sale of fireworks? In other words, if the Sheriff decides to issue no license whatsoever for their sale, regardless of other facts and conditions, would he have that authority?"

In answering these questions, we must recognize the basic proposition that governmental bodies and entities have only such authority as is granted to them or necessarily implied from the grant. The grant usually is in the form of a constitutional provision or a legislative act.

As to the first question, in examining the provisions of chapters 58-03 and 58-06, we do not find any provision which authorizes the township to license and charge a fee for the sale of fireworks. It would therefore be our opinion that a township does not have such authority. This does not imply that the township is prohibited from zoning the various areas of the township. Through the zoning process, commercial enterprise may be prohibited in certain areas. This, however, would have to be in conformance with zoning procedures.

As to question number 2, the same observations made with reference to townships would apply to counties, except section 23-15-04 which actually imposes a duty and responsibility upon the county sheriff. This duty and responsibility is pursuant to specific state legislation as distinguished from a county regulation or resolution. It does not grant any authority or responsibility to county

commissioners. The county, however, through the zoning powers, may designate certain areas in which commercial enterprises may not be operated. This, however, would be the result of the zoning law rather than the regulation of fireworks or other commercial business.

As to the last question, it would appear that in instances where the applicant meets the statutory requirements, particularly those set out in section 23-15-01, the refusal to grant a license could result in a court action ordering or requiring it to be issued.

As to the provisions of section 23-15-01, because of the repeal of personal property tax, its provisions would have to be read to mean that any person who operated a retail business which would have been assessed, as distinguished from was assessed, on April 1. The person meeting the statutory qualifications and requirements, upon being denied a license by the sheriff, could institute legal action to compel the issuance of the license.

The cities have been greater latitude in areas in which it may enact ordinances. This could be particularly true of those cities having home rule.

Whether or not the townships and counties should be given the authority to regulate or prohibit the sale of certain fireworks altogether is a matter that lies within the sound discretion of the legislature. This is basically a legislative matter.

I trust this answers your inquiry.

Sincerely yours,

ALLEN I. OLSON

Attorney General